92-1050

No. _____

Supreme Court, U.S.
FILED
DEC 15 1992
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

IN RE RISK MANAGERS INTERNATIONAL, INC.; HERSCHEL HANCOCK, Individually and as Officer of RISK MANAGERS INTERNATIONAL, INC.; and CORPORATE UNDERWRITERS, LTD.,

Petitioners.

PETITION FOR WRIT OF MANDAMUS TO THE HONORABLE JOHN K. DIETZ, PRESIDING JUDGE OF THE 250TH JUDICIAL DISTRICT COURT OF TRAVIS COUNTY, TEXAS

Terry L. Scarborough
Attorney of Record for Petitioners
Jenkens & Gilchrist, a
Professional Corporation
600 Congress Avenue, Ste. 2200
Austin, Texas 78701
(512) 499-3800

Hector DeLeon, DeLeon, Boggins & Richards
701 Brazos, Ste. 480
Austin, Texas 78701
(512) 478-5308

Alicia G. Curran, Burt Barr & Associates
304 South Record Street
Dallas, Texas 75202
(214) 742-8001
Attorneys for Petitioners

---

92 rr

QUESTIONS PRESENTED

I. Whether it is an unconstitutional invasion of privacy for a state to force a litigant to produce confidential financial information absent a showing by the requesting party that the confidential financial information is both relevant and material to the issue before the court.

II. Whether a state can compel a foreign litigant to produce confidential information in violation of confidentiality statutes of the foreign litigant's jurisdiction when such production would result in the imposition of criminal penalties on the litigant and the requesting party has not met its burden to show that the discovery is necessary to the action, not otherwise readily attainable and directly relevant and material.

LIST OF PARTIES

1. The Honorable John K. Dietz, Presiding Judge of the 250th Judicial District Court of Travis County, Texas

2. Risk Managers International, Inc.

3. Herschel Hancock

4. Corporate Underwriters, Ltd.

5. State of Texas and the Texas State Board of Insurance [Real Parties in Interest]

RULE 29.1 LIST

There is no parent or subsidiary company either of Risk Managers International, Inc. or Corporate Underwriters, Ltd.

TABLE OF CONTENTS

QUESTIONS PRESENTED i
LIST OF PARTIES ii
RULE 29.1 LIST iii
TABLE OF CONTENTS iv
TABLE OF AUTHORITIES vi
THE CASE BELOW 2
JURISDICTION 2
CONSTITUTION, STATUTES AND AUTHORITIES INVOLVED 2
RULE 20 STATEMENT 3
STATEMENT OF THE CASE 5
REASONS FOR GRANTING THE PETITION 8

I. THE ORDER COMPELLING THE PRODUCTION OF PETITIONERS' CONFIDENTIAL INFORMATION IS IN DIRECT CONTRAVENTION OF PETITIONERS' RIGHT TO PRIVACY UNDER THE CONSTITUTION OF THE UNITED STATES 9

II. THE ORDER COMPELLING THE PRODUCTION OF PETITIONER'S CONFIDENTIAL INFORMATION IS IN DIRECT CONTRAVENTION OF THE CONFIDENTIALITY LAWS OF THE TURKS AND CAICOS ISLANDS 17

CONCLUSION 24
INDEX OF APPENDICES 25

TABLE OF AUTHORITIES

CASES

Civil Aeronautics Board v. United Airlines, Inc.,
542 F.2d 394 (7th Cir. 1976) 10

Lloyd A. Fry Roofing Company v. State,
524 S.W.2d 313 (Tex. Civ. App.
Dallas 1975, writ ref'd n.r.e.) 12

Lundsford v. Morris, 746 S.W.2d 471 (Tex. 1988) 12

Maresca v. Marks, 362 S.W.2d 299 (Tex. 1962) 16

McKenna v. Fargo, 451 F. Supp. 1355 (D.C.N.J. 1978) 10

McKesson Corp. v. Islamic Republic of Iran,
138 F.R.D. 1 (D.D.C. 1991) 21, 23

Nixon v. Administrator of General Services,
433 U.S. 425, 97 S.Ct. 277 (1977) 9, 10, 11, 13

Plante v. Gonzalez, 575 F.2d 1119 (5th Cir. 1978),
cert. denied, 439 U.S. 1129, 99 S.Ct.
1047 (1979) 10, 11

Rhinehart v. Seattle Times Co., 467 U.S. 20,
104 S.Ct. 2199 (1984) 10

Tavoulareas v. The Washington Post Company,
724 F.2d 1010 (D.C. Cir. 1984) 10

Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868 (1968) 11

Whalen v. Roe, 429 U.S. 589, 97 S.Ct. 869 (1977) 9, 10, 11

CONSTITUTION AND STATUTES

United States Constitution, Fourth Amendment 10, 11
28 U.S.C. § 1257(a) (1988) 2
28 U.S.C. § 1651(a) (1949) 2, 4
Texas Insurance Code Article 1.14-1, § 2(a) 7
Texas Insurance Code Article 1.14-1, § 2(b)(4) 7, 15
Texas Insurance Code Article 1.14-1, § 3(d) 12
Texas Insurance Code Article 1.14-1, § 11 14
Texas Insurance Code Article 1.14-1, § 12 . . . . . 7, 14, 15
Texas Insurance Code Article 21.21 12
Texas Insurance Code Article 21.28 6
Turks & Caicos Islands, Confidential Relationships Ordinance 1979, § 2 20
Turks & Caicos Islands, Confidential Relationships Ordinance 1979, § 4 20
Turks & Caicos Islands, Companies Ordinance 1981, § 199 — § 202 . . . . . 19, 20

MISCELLANEOUS

Restatement (3rd) of Foreign Relations Law § 442 (1987) 21, 23

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

IN RE RISK MANAGERS INTERNATIONAL, INC.;
HERSCHEL HANCOCK, Individually and as
Officer of RISK MANAGERS INTERNATIONAL,
INC.; and CORPORATE UNDERWRITERS, LTD.,

Petitioners.

PETITION FOR WRIT OF MANDAMUS TO THE HONORABLE JOHN K. DIETZ, PRESIDING JUDGE OF THE 250TH JUDICIAL DISTRICT COURT OF TRAVIS COUNTY, TEXAS

Petitioners, Risk Managers International, Inc., Herschel Hancock, Individually and as Officer of Risk Managers International, Inc. and Corporate Underwriters, Ltd., hereby petition for a Writ of Mandamus to review the orders of the Honorable John K. Dietz, Presiding Judge of the 250th Judicial District Court of Travis County, Texas in this case compelling discovery of the Petitioners' confidential information.

THE CASE BELOW

The style of the case below is *The State of Texas and The State Board of Insurance v. Risk Managers International, Inc.; Herschel Hancock, Individually and as Officer of Risk Managers International, Inc.; and Corporate Underwriters, Ltd.*, Cause No. 471,468 in the 299th Judicial District Court of Travis County, Texas.

JURISDICTION

The Supreme Court of the State of Texas overruled Petitioners' motion to file petition for writ of mandamus on September 16, 1992 by letter. A copy of the letter is reproduced at Appendix A-2 hereto. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1651(a) (1949) and 28 U.S.C. § 1257(a) (1988).

CONSTITUTION, STATUTES AND AUTHORITIES INVOLVED*

United States Constitution, Fourth Amendment

Texas Insurance Code Art. 1.14—1

§ 2(a)
§ 2(b)(4)
§ 3(d)
§ 11
§ 12

---

*The text of these provisions is reproduced in full at Appendix B hereto

Texas Insurance Code Art. 21.21 § 15(c)

Turks & Caicos Islands, Confidential Relationships Ordinance 1979, § 2

Turks & Caicos Islands, Confidential Relationships Ordinance 1979, § 4

Turks & Caicos Islands, Companies Ordinance 1981, § 199 — § 202

Restatement (3rd) of Foreign Relations Law § 442 (1987)

RULE 20 STATEMENT

In this proceeding, Petitioners, defendants in the underlying cause, seek the issuance of a writ compelling the Honorable John K. Dietz, Presiding Judge in the 250th Judicial District Court, Travis County, Texas, to vacate his orders compelling discovery of the Petitioners' confidential information. The orders complained of are included at Appendix C and Appendix D.

This case was originally filed in 1989 by the State of Texas when the State obtained an illegal receivership against Petitioners on the basis of misleading affidavits and pursuant to an improper ex parte hearing. For three days, the State plundered the Petitioners' records until Petitioners' attorneys could obtain dissolution of the illegal receivership. The State next attempted to obtain, through the discovery process, additional confidential information. Pertinent parts of the State's discovery requests to which Petitioners object are included at Appendix C-1-1, C-2-1 and Appendix E.

Petitioners presented their Motion for Leave to File Petition for Writ of Mandamus and for Immediate Temporary Relief to the Third

Court of Appeals, Austin, Texas, on June 15, 1992. The Court of Appeals denied Petitioners' Motion for Leave to File Petition for Writ of Mandamus and for Immediate Temporary Relief on July 1, 1992. [Appendix A-1]. On July 28, 1992, Petitioners presented their Motion for Leave to File Petition for Writ of Mandamus and for Immediate Temporary Relief to the Supreme Court of Texas. The Supreme Court of Texas denied this Motion by letter dated September 16, 1992 which is included at Appendix A-2.

Issuance by this Court of a writ of mandamus authorized by 28 U.S.C. § 1651(a) is justified because the Third Circuit Court of Appeals of Texas and the Texas Supreme Court denied Petitioners' request for mandamus, and only the United States Supreme Court now has appellate jurisdiction and the discretionary power to mandamus Judge Dietz, the presiding judge of the state district court, who ordered production of the confidential information. In addition, there are present exceptional circumstances warranting the exercise of the Court's discretionary powers. Specifically, Petitioners are entitled to a writ of mandamus because the orders complained of command immediate compliance. Petitioners must begin to produce all of the confidential information immediately and, once produced, the Petitioners will not be able to regain their constitutional right to privacy in such information. Thus, production of this confidential information would result in the unreasonable and unrecoverable invasion of Petitioners' constitutionally guaranteed right to privacy. Further, production of confidential information pertaining to Corporate Underwriters, Ltd. as ordered would subject Corporate Underwriters, Ltd. to criminal penalties in the

Turks and Caicos Islands. For these reasons, Petitioners contend that any remedy offered by an ordinary appeal is inadequate and relief cannot be obtained in any other form or from any other court.

STATEMENT OF THE CASE

Corporate Underwriters is an insurance company incorporated and lawfully operating under the laws and statutes of the Turks and Caicos Islands in the British West Indies. Corporate Underwriters is selling and providing independently procured insurance for Texas employers who choose to contract with it. By the express intent of the insurer and the insureds, this insurance is outside of Texas' workers' compensation system and is not statutory workers' compensation insurance. This arrangement is legal and benefits employers who purchase workers' compensation insurance because there is a significant savings in premium cost and improved processing and claim payment services. RMI is a third-party administrator for Corporate Underwriters and performs certain services for it, such as claims administration. Mr. Hancock is an RMI employee. Neither Mr. Hancock or RMI are insurers.

In March 1989, Texas' State Board of Insurance served a notice of deposition and subpoena duces tecum on Mr. Hancock, as President of RMI. He appeared at the deposition and, upon advice of counsel, asserted his Fifth Amendment and state constitutional rights, opposing the State's demands to produce records and to testify and produce evidence against himself. The State then filed suit against Mr.

Hancock, asking the court to compel him to produce the requested records and answer the State's questions. The Travis County District Court ordered Mr. Hancock to produce the documents and Mr. Hancock timely appealed to the Third Court of Appeals at Austin, Texas. In connection with this earlier case, Mr. Hancock posted a supersedeas bond superseding the production of the documents subject to the Fifth Amendment privilege pending appeal.

Apparently angered that one of its citizens would assert the Fifth Amendment and determined to circumvent Mr. Hancock's constitutional protection against unreasonable, aggressive government action, the State then embarked on an outrageous and offensive course of harassment. While the above Fifth Amendment suit was pending, the State obtained a facially improper, illegal receivership upon RMI purportedly under the authority of *Tex. Ins. Code*, Art. 21.28 by filing a new lawuist (the instant action). The receivership was obtained ex parte and it was instituted without giving notice to Corporate Underwriters' attorneys. The State abused its power as receiver by seizing Mr. Hancock's personal files and documents from RMI's premises; by summarily taking over RMI's premises; by making intimidating statements to RMI employees and customers; by preventing RMI from conducting its business and third-party administration for Corporate Underwriters; by using RMI's office equipment and supplies and consuming RMI food and drinks without compensation to RMI; by threatening to and, in one case, actually searching RMI employees' purses under threat of contempt of court; and by making false, damaging statements concerning Petitioners to third parties with the

intent and knowledge that the statements would be republished. The State seized, copied and took many of the very documents that were the subject of the Fifth Amendment plea and the supersedeas bond in the first case. Some of the privileged documents were copied using RMI's copier and sent to the State's Austin office using RMI's fax machine.

Petitioners had the illegal receivership dissolved as soon as practical to stop these abuses, but the State continues to pursue Petitioners' confidential information through the discovery process in the underlying lawsuit. The underlying case in this matter is now framed by the State primarily as an attempt to stop the Petitioners from engaging in the unauthorized practice of insurance. The Petitioners contend that they are not engaged in the unauthorized practice of insurance because any acts they conduct in the State of Texas with regard to risks resident, located or to be performed in the State have been performed pursuant to the exemption provided by Article 1.14-1, §§ 2(b)(4) and (12) of the *Tex. Ins. Code*, commonly referred to as the "independently procured insurance" exemption. [Appendix B-5-3]. This provision grants an exemption from the definition of what constitutes the business of insurance as defined by Article 1.14-1, § 2(a) of the *Tex. Ins. Code*. [Appendix B-5-1].

For RMI, the only documents that the State is seeking that are still the subject of dispute are confidential financial information. Corporate Underwriters has not produced any confidential information, including confidential financial information, based on its reliance on the confidentiality laws of the Turks and Caicos Islands.

The Petitioners do not want to provide their confidential information to the State. From the start, Petitioners timely and properly raised their objections and exemptions from discovery, and have not waived any such objections or exemptions. The remaining documents in issue contain personal, confidential and private information of the highest magnitude. The discovery requests propounded by the State with respect to financial information are extremely broad. Requested financial information includes personal and corporate financial statements, bank records, bank statements, deposit slips, cancelled checks, claims deposit account information, wire transfer acknowledgements, assets and liabilities and documents supporting the same, salary and compensation information, stocks, dividends received from any source whatsoever, accountant information, payments and receipts in kind, bank records, investments made, reserve loss and premium information, audit reports, interest earned, receipts from all sources, and asset holdings, with all of this information covering the period from January 1985 to the present.

REASONS FOR GRANTING THE PETITION

Introduction

If the Petitioners are compelled to produce the confidential information requested, they will be irreparably harmed by the State's conduct because the invasion of their constitutionally protected right to privacy that would ensue could not be remedied by an appeal. No appellate court could cure the trial court's discovery error once committed. After the privileged documents are inspected, examined

and reproduced, a holding by an appellate court that the trial court had erroneously issued the order would be cold comfort to Petitioners in protecting their papers. Regarding Corporate Underwriters, this infringement of its constitutional rights would be further aggravated by the fact that to comply will result in severe criminal penalties imposed upon it by the Turks and Caicos Islands.

I.

THE ORDER COMPELLING THE PRODUCTION OF PETITIONERS' CONFIDENTIAL INFORMATION IS IN DIRECT CONTRAVENTION OF PETITIONERS' RIGHT TO PRIVACY UNDER THE CONSTITUTION OF THE UNITED STATES

Petitioners, as litigants in the underlying case, have a constitutional right to avoid public disclosure of private information. *Whalen v. Roe*, 429 U.S. 589, 97 S.Ct. 869 (1977). In *Whalen*, the Supreme Court clarified the privacy interests protected by the Constitution:

> The cases sometimes characterized as protecting "privacy" have in fact involved at least two different kinds of interests. One is the individual interest in avoiding disclosure of personal matters, and another is the interest in independence in making certain kinds of important decisions.

Id. at 598-600, 97 S.Ct. at 875-877 (footnotes omitted). In *Nixon v. Administrator of General Services*, 433 U.S. 425, 97 S.Ct. 277 (1977), the Supreme Court reaffirmed that one element of privacy is the

individual's interest in avoiding disclosure of personal matters. The *Nixon* courtY relied mostly on Fourth Amendment case law and analysis in evaluating the privacy claim at issue. The implication is that the constitutional right to non-disclosure of personal matters is rooted primarily in the Fourth Amendment. 43 U.S. at 458-65, 97 S.Ct. at 2797-801. The State must justify the burden it imposes on Petitioners' constitutional right to privacy by its requests for information. *McKenna v. Fargo*, 451 F. Supp. 1355 (D.C.N.J. 1978).

Both the Fifth and Third Circuit Courts of Appeal have interpreted *Whalen* and *Nixon* as recognizing a constitutional right of confidentiality in personal matters. Further, constitutionally protected matters clearly include financial matters. The court in *Plante v. Gonzalez*, 575 F.2d 1119 (5th Cir. 1978), *cert. denied*, 439 U.S. 1129, 99 S.Ct. 1047 (1979), stated that financial privacy is a "matter of serious concern, deserving strong protection." This protection is extended to corporations as well as to individuals. *Tavoulareas v. The Washington Post Company*, 724 F.2d 1010 (D.C. Cir. 1984). State demands for corporate information must be reasonably definite and reasonably relevant to some proper legislative purpose to avoid "serious problems under the Fourth Amendment." *Civil Aeronautics Board v. United Airlines, Inc.*, 542 F.2d 394 (7th Cir. 1976).

The significance in this context of the Supreme Court's decisions in *Whalen* and *Nixon* and of the Fifth Circuit's decision in *Plante* lies in their explicit recognition of the constitutional right to avoid disclosure of personal matters. In discovery matters, individuals are often forced by a court to disclose the kind of personal information

deserving privacy protection as described by these decisions. An individual's constitutional right to privacy can thus be implicated by the discovery process to the same extent that it is implicated by, for example, the disclosure requirements of statutes. *See, e.g. Rhinehart v. Seattle Times Co.*, 467 U.S. 20, 104 S.Ct. 2199 (1984)(recognizing significant federal constitutional privacy interests in litigants' maintaining the confidentiality of personal information produced in discovery). In each case, the state is forcing disclosure of personal information.

In both *Whalen* and *Nixon*, the Supreme Court determined the propriety of state intrusion by balancing the need for the intrusion against the severity of the intrusion, similar to traditional Fourth Amendment analysis. *See e.g., Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868 (1968). This balancing standard has been adopted by a number of courts faced with determining the lawfulness of intrusions on privacy interests. In *Plante*, the Fifth Circuit concluded that the balancing test is appropriate in judging intrusions on the first of *Whalen's* two recognized privacy interests: the right to avoid disclosure of personal matters.

Under the facts before this Court, the most important factor to consider in applying the balancing test is that the State's attempt to obtain information concerning RMI's and Corporate Underwriters' business matters is of such a sweeping nature and, for the most part, so unrelated to the matter properly under inquiry as to exceed its investigatory power. In the underlying case, the State simply seeks a determination that Petitioners are engaged in the unauthorized business

of selling insurance and/or are not operating under the independently procured insurance statutory exception. In addition, the State seeks the imposition of pre-determined statutory penalties. The confidential information the State requests is completely unnecessary to decide either issue.

The *Tex. Ins. Code*, Art. 1.14-1, § 3(d) provides for a penalty for each act of violation and for each day of violation [Appendix B-5-3]; Article 21.21, § 15(c) also provides for penalties on a per violation basis. [Appendix B-5-5]. The penalties are based on acts and occurrences, which can easily be determined in this case from information other than confidential financial information. It is not necessary for the State to inquire into Petitioners' private financial matters in order to prove their allegations.

Under Texas discovery law, current net worth is relevant to the imposition of exemplary damages, but the law has not been extended to statutory damages as are at issue here. *Lundsford v. Morris*, 746 S.W.2d 471 (Tex. 1988). For example, in another Texas decision, *Lloyd A. Fry Roofing Company v. State*, 524 S.W.2d 313 (Tex. Civ. App.—Dallas 1975, writ ref'd n.r.e.) the court held that where statutory penalties were concerned, evidence of a defendant's general financial condition, when remote from the issue, as here, should not be presented to the jury in the absence of other evidence showing its relevance to the particular violation charged. Wealth in itself should not be material in determining penalties that are assessable on a per-violation basis. In this regard it should be noted that, in addition to seeking simple evidence of the Petitioners' current net worth, the State

is trying to reach back and get all of Petitioners' financial information from January 1985 to the present. Virtually all of the requested financial information is unnecessary to a determination of current net worth.

Further, knowledge of Petitioners' confidential financial matters is immaterial to whether Petitioners are doing business as unauthorized insurers under Texas law or are operating under the independently procured insurance exception. This determination can be adequately made by a review of the contents of the numerous boxes of documents that Petitioners have already produced in this case, specifically including the policies, the policy endorsement statements and summary sheets. The State's request is therefore per se unreasonable under the circumstances.

Reasonableness is the touchstone of the balancing test. *Nixon*, 433 U.S. 425 at 454, 97 S.Ct. at 2796. Unreasonable disclosure of confidential financial information is protected by the Constitution. Here, the State's request is unreasonable because it is unnecessary and immaterial to any of its allegation against Petitioners. The confidential information sought by the State would at best be duplicative of information already in the State's possession. Petitioners' privacy expectations should not be violated merely to obtain duplicative information. There is no justification for requiring Petitioners to produce the same information in a different form. The burden on the Petitioners to produce the financial information greatly outweighs any supposed benefit that the State may obtain by viewing such duplicative information.

The State also contends that the confidential financial information is relevant for purposes of determining certain premium taxes that it alleges are due and owing from Corporate Underwriters under *Tex. Ins. Code*, Art. 1.14-1 § 11 which provides that every unauthorized insurer shall pay a premium receipts tax of 4.85% of the gross premiums charged for such insurance on subjects resident, located or to be performed in Texas. [Appendix B-5-3]. Petitioners contend in the underlying case that they are lawfully engaged in the insurance business pursuant to the independently procured insurance exception of the *Tex. Ins. Code*. Assuming that this exception applies to Petitioners, Article 1.14-1 § 12 provides that the insureds will pay the premium tax. [Appendix B-5-4] The rate of this tax is 3.85% of gross premiums charged. Thus, the tax base for both unauthorized insurance and independently procured insurance is the same. The only difference is the rate. The State has all the information it needs to calculate any premium tax it alleges is due and owing at either rate. The Petitioners have already provided the information necessary to determine the tax because they have identified the 31 Texas insureds in issue. The remaining information necessary is easily obtainable through public records. Each insured makes a tax filing with the Texas Comptroller's office showing the amount of premium taxes paid in order to determine the amount of the tax allegedly owed. The State can determine premiums paid by the insureds in this manner and use this information to calculate the premium tax. Even if Petitioners are subject to a 1% higher tax rate as a result of their alleged status as an unauthorized insurer, the State needs only the information contained in the insureds'

tax filings with the Texas Comptroller showing the amount of premium taxes paid in order to determine the amount of tax allegedly owed. Further, Petitioners have produced policies, policy endorsement statements and policy summary sheets which show the amount of premiums paid for each policy. The ease with which the premium tax can be calculated without the State having unbridled access to Petitioners' confidential financial information weighs heavily against permitting the State to violate Petitioners' right to privacy.

An additional factor in the balance is that there are no allegations by the State that the Petitioners have done anything improper or illegal with any of the monies they have received or that they are not properly paying or adjusting claims. Instead, this case is about whether Petitioners are unauthorized insurers and, therefore, whether they are properly operating under the independently procured insurance exception to the statutory scheme set forth in Article 1.14-1 § 2(b)(4) and § 12 of the *Tex. Ins. Code*. [Appendix B-5-3]. Financial information is not necessary for either of these considerations. A reading of Article 1.14-1 § 2(b)(4) reveals that this question centers instead on where negotiations occur and whether the premium tax payable by the insureds as described above has been accomplished.

Furthermore, the severe criminal penalties that will be suffered by Corporate Underwriters [see discussion below] if it is forced to violate the confidentiality laws of its home jurisdiction cannot fairly be balanced against the State's invasive curiosity about private information for which it has no legitimate need, nor will the sacrifice of Petitioners' constitutional protection further the interests of justice.

For these reasons, the State cannot meet its burden of justifying its proposed invasion of Petitioners' privacy. Sacrifice of a litigant's protection of privacy should be kept to a minimum, and this requires scrupulous limitation of discovery for information furthering justice between the parties which, in turn, can only be information of relevancy and materiality to the matter in controversy. *Maresca v. Marks*, 362 S.W.2d 299 (Tex. 1962). The information the State requests is not relevant and material to the issues in the underlying lawsuit. Mere "fishing" expeditions, such as that being engaged in here by the State, do not justify the unreasonable violation of Petitioners' constitutionally protected privacy rights. Because of the particular, private, confidential nature of this type information, the requesting party should have to show that the confidential information is both relevant and material to the pertinent issue in the case. There has been no legitimate showing by the State that the requested confidential information is both relevant and material to a question at hand. Relevancy and materiality should not be presumed.

Finally, when confidential information is involved, even the hint of harassment should weigh against a party having to produce such information. This is especially the case when the confidential information in question is merely duplicative or cumulative of information already at the requesting party's disposal and certainly should be the case when the confidential information is irrelevant or immaterial. This is exactly the situation in which Petitioners find themselves. The Petitioners' confidential information is immaterial and irrelevant to the issue of whether it is engaged in the unauthorized

business of insurance, and at best the financial information would be duplicative or cumulative of other information at the State's disposal for any issue related to this case. Given the background behind the filing of this case to circumvent Mr. Hancock's Fifth Amendment rights and the illegal receivership obtained to unlawfully convert Petitioners' confidential information, there is substantial evidence that there has been a pattern of harassment by the State against Petitioners. The Petitioners spent substantial time and effort dissolving the State's illegal receivership as soon as possible to protect themselves from the State seizing, duplicating and sending to others all of their private confidential information. It would be an injustice for the Courts to now allow the State to do exactly that in a direct fashion.

II.

THE ORDER COMPELLING THE PRODUCTION OF PETITIONERS' CONFIDENTIAL INFORMATION IS IN DIRECT CONTRAVENTION OF THE CONFIDENTIALITY LAWS OF THE TURKS AND CAICOS ISLANDS

The Honorable John R. Dietz ruled that the net worth of Corporate Underwriters is discoverable and that Corporate Underwriters must produce all responses and responsive financial documents requested by the State, including those objected to by Petitioners. [Appendix E]. Corporate Underwriters seeks relief from the Court from this ruling since to enforce the orders will cause Corporate Underwriters to be in the impossible position of making a Hobson's

choice: violate the Turks and Caicos laws and be subject to criminal penalties and contempt of court or violate Texas discovery rules and be subject to sanction.

Corporate Underwriters' business is subject to regulation by the government of the Turks and Caicos, specifically, Part VII of The Companies Ordinance 1981 ("1981 Ordinance") beginning at § 180. Pursuant to such regulation, Corporate Underwriters may offer to U.S. citizens and other non-Turk and Caicos residents an insurance product prepared and controlled from within the Turks and Caicos. Corporate Underwriters' "objects" are mainly off-shore while the work Corporate Underwriters carries on in the Turks and Caicos is within the scope of § 197 of the ordinance.

Further, every insurance company incorporated in the Islands is extensively regulated by the Insurance Ordinance of 1990 and its accompanying regulations. The purpose of this ordinance and the regulations is to safeguard insureds and to ensure that all insurance companies are capable of effectively representing the interests of all of their policy holders. In addition, the company must show that it is capable of carrying on the business it purports to conduct. Under these regulations, confidential information is disclosed to the insurance supervisor who issues insurance licenses and who is bound by the confidentiality ordinance from disclosing the information. The insurance supervisor will not issue a license unless he is satisfied on all of the issues covered by the Insurance Ordinance of 1990. Corporate Underwriters must operate within the law or be struck from the Turks and Caicos Register of companies and/or have its operations suspended.

Two issues were before Judge Dietz: (i) whether Turks and Caicos law controlled resolution of the issue and the effect of the Order rendered by the Turks and Caicos Supreme Court [Appendix F] and (ii) whether the burden was on the State to prove that on balance with the Turks and Caicos laws it had a legitimate overriding need for the information sought from Corporate Underwriters. Corporate Underwriters provided Judge Dietz with the Turks and Caicos statutes [Appendix B-2] and an Order from the Turks and Caicos Supreme Court [Appendix F] demonstrating the existence, validity and applicability of that jurisdiction's confidentiality ordinances. The Order was the result of Petitioners' voluntary filing with the Supreme Court of the Turks and Caicos Islands a "Summons for Directions" on September 30, 1991 with respect to the discovery propounded upon it by the State of Texas. In addition, Corporate Underwriters showed by the affidavits of a director of and the local attorney for Corporate Underwriters that the disclosure prohibited by the Turks and Caicos laws should be excluded or could be obtained where available from an alternative source located within the State of Texas. The insurance policies and claims documents sought by the State were made available by RMI. Therefore, Corporate Underwriters is objecting primarily to responding to requests regarding Corporate Underwriters' confidential financial information and regarding its officers and directors. According to Turks and Caicos law and the Order, the confidential information cannot be reported.

Specifically, under § 200 of the 1981 Ordinance protection from disclosure of confidential information clearly extends to "all confidential

information with respect to business of a professional nature of an exempted company that arises in or is brought into the Islands and to all persons coming into possession of such information at any time thereafter whether they be within the jurisdiction or thereout." [Appendix B-3-2]. The parties do not dispute that Corporate Underwriters is subject to the jurisdiction and laws of the Turks and Caicos Islands and that it is an exempt company.

It is clear from an analysis of the applicable Turks and Caicos statutes [Appendix B-2] and the Order rendered by that jurisdiction's supreme court that Corporate Underwriters cannot disclose any information that is confidential within the meaning of the 1981 Ordinance without dire consequences. Confidential information is defined in § 199 of the 1981 Ordinance and § 2 of the Confidential Relationships Ordinance 1979 ("1979 Ordinance"). Section 4 of the 1979 Ordinance provides that anyone who divulges confidential information to any person not entitled to the possession of the information shall be guilty of an offense. [Appendix B-2-3]. The penalties for violation of § 4 are severe. Under § 4(3), a person committing an offense under § 4 shall be liable for a fine of $5,000 or to imprisonment for two years or to both. A corporation which violates § 4 is liable for a $25,000 fine. A professional person who violates § 4 is liable for a $10,000 fine or to imprisonment for three years or to both. [Appendix B-2-4]. Section 202 of the 1981 Ordinance is similar, except that where a professional person is convicted the penalties are doubled. [Appendix B-3-6]. Further, a person found guilty of violating the 1981 Ordinance is subject to having his work permit, if any,

revoked and to being deported. For this reason, the Petitioners have no alternative but to seek relief from the United States' highest court.

In light of the staggering consequences that Corporate Underwriters faces, the issue whether Texas law or Turks and Caicos law controls is crucial. This is governed by the Restatement (Third) of Foreign Relations Law ("Restatement") § 442. [Appendix B-4-1]. *McKesson Corp. v. Islamic Republic of Iran*, 138 F.R.D. 1 (D.D.C. 1991). This section of the Restatement and the comments thereto suggest that a higher standard must be met before responses to foreign discovery justify requiring even so much as a good faith effort on Corporate Underwriters' part to secure permission from the foreign jurisdiction to make the information available. In addressing conflict of laws problems that may arise between an international or foreign entity and the law of the United States or a state thereof, the Restatement provides the following format for reconciling the conflict:

> . . .[i]n deciding whether to issue an order directing production of information located abroad and in framing such an order. . . a court in the United States should take into account the importance to the investigation or litigation of the documents or other information requested; the degree of specificity of the request; whether the information originated in the United States; the availability of alternative means of securing the information; and the extent to which non compliance with the request would undermine an important interest of the state or compliance with the request would undermine an important interest of the state where the information is located.

Section 442(2) of the Restatement also provides that:

> If disclosure of information located outside the United States is prohibited by a law, regulations or order of the court, or other authority of the state in which the information or prospective witness is located or of the state of which a prospective witness is a national,
>
> a. a court or agency of the United States may require the person to whom the order is directed to made a good faith effort to secure permission from the foreign authorities to make the information available;
>
> b. a court or agency should not ordinarily impose sanctions of contempt, dismissal or default on a party that has failed to comply with the order for production, excepting cases of deliberate concealment or removal of information or a failure to make a good faith effort in accordance with paragraph "a";
>
> c. a court or agency may, in appropriate cases, make findings of fact adverse to a party that has failed to comply with the order for production, even if that party has made a good faith effort to secure permission from the foreign authorities to make the information available and that effort was unsuccessful. (Emphasis Added)

Corporate Underwriters, as evidenced by the fact that it sought the guidance of the Supreme Court of the Turks and Caicos Islands regarding the discovery requests, made a good faith effort to comply with the requests. Despite this effort, the Supreme Court of the Turks and Caicos ordered Corporate Underwriters to comply with that jurisdiction's confidentiality ordinances. Thus, the State's remedy, at best, is that the court may make findings of fact adverse to Corporate

Underwriters. The Restatement does not provide that production and responses should be compelled.

Further, the burden of establishing what discovery is "necessary to the action, is not otherwise readily attainable, and is directly relevant and material" from a foreign entity shifts to the party requesting the information. Restatement § 442, Comment a; *McKesson Corp.*, 138 F.R.D. at 3. The State did not and cannot meet this burden. There has been no showing that the confidential information was important to the investigation or litigation of the case. Furthermore, many of the requests were overbroad, burdensome or not relevant and in furtherance of the scheme of harassment discussed above. The State had other, less obtrusive, alternative means of securing the information. Non-compliance with the requests would not undermine an important interest of the State but would undermine an important interest of the Turks and Caicos Islands. For these reasons, Corporate Underwriters cannot lawfully be compelled by Judge Dietz to produce its information protected from discovery by the confidentiality ordinances of the Turks and Caicos Islands.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Court issue a writ of mandamus in this case to the Honorable John K. Dietz, Presiding Judge of the 250th Judicial District Court of Travis County, Texas in order to prevent the unconstitutional and illegal disclosure of Petitioners' confidential information.

DATED: December 14, 1992.
Austin, Texas

Respectfully submitted,

Terry L. Scarborough
Attorneys of Record for Petitioners
Jenkens & Gilchrist, a
Professional Corporation
600 Congress Avenue
Suite 2200
Austin, Texas 78701
(512) 499-3800

Hector DeLeon
DeLeon, Boggins & Richards
701 Brazos, Ste. 480
Austin, Texas 78701
(512) 478-5308

Alicia G. Curran
Burt Barr & Associates
304 South Record Street
Dallas, Texas 75202
(214) 742-8001
Attorneys for Petitioners

INDEX OF APPENDICES

APPENDIX A

Order of the Third District Court of Appeals at Austin Overruling Petitioner's Motion for Leave to File Petition for Writ of Mandamus A-1
Letter of the Supreme Court of Texas overruling Petitioner's Motion for Leave to File Petition for Writ of Mandamus A-2

APPENDIX B

United States Constitution, Fourth Amendment B-1-1
Turks and Caicos Islands Confidential Relationships Ordinance 1979 . . . . . B-2-1
Turks and Caicos Islands, The Companies Ordinance, 1981 . . . . . B-3-1
Restatement (Third) Foreign Relations Law B-4-1
Texas Insurance Code B-5-1

APPENDIX C

March 10, 1992 Order Regarding the Discovery of Financial Information of Defendant Risk Managers International C-1
March 10, 1992 Order Regarding the Discovery of Financial Information of Defendant Herschel Hancock . C-2

APPENDIX D

April 14, 1992 Order Denying Motion for Reconsideration D-1

APPENDIX E

State of Texas' Interrogatories and Requests for Production E-1

APPENDIX F

February 6, 1992 Order of the Supreme Court of the Turks and Caicos Islands F-1

APPENDIX A

IN THE COURT OF APPEALS,
THIRD DISTRICT OF TEXAS,
AT AUSTIN

NO. 3-92-284-CV

RISK MANAGERS INTERNATIONAL, INC., ET AL.,
RELATORS

vs.

HONORABLE JOHN K. DIETZ, JUDGE
RESPONDENT

ORIGINAL PROCEEDING FROM TRAVIS COUNTY

ORDER

PER CURIAM

Relators' motion for leave to file petition for writ of mandamus and request for immediate temporary relief is overruled. Tex. R. Civ. P. Ann 121(c) (Pamph. 1992).

It is so ordered this 1st day of July 1992.

[Before Chief Justic Carroll and Justice Aboussie]

Filed: July 1, 1992

[Do Not Publish]

THE SUPREME COURT OF TEXAS
P. O. Box 12248
Supreme Court Building
Austin, Texas 78711
John T. Adams, Clerk

September 16, 1992

Mr. Terry L. Scarborough
Jenkins & Gilchrist, P.C.
2200 One American Center
600 Congress
Austin, TX 78701

Mr. John Holman Barr
Burt Barr & Associates
304 S. Record Street
Dallas, TX 75202

Mr. Hector DeLeon
DeLeon, Boggins & Richards
480 Austin Centre
701 Brazos Street
Austin, Texas 78701

Ms. Linda Ibach Shaunessy
Assistant Attorney General
Finance Division
411 West 13th St.,
7th Floor
Austin, TX 78711

RE: Case No. D-2716
Style: RISK MANAGERS INTERNATIONAL, INC.; HERSCHEL HANCOCK, INDIVIDUALLY AND AS OFFICER OF RISK MANAGERS INTERNATIONAL, INC.; AND CORPORATE UNDERWRITERS, LTD.

v. THE HONORABLE JOHN K. DIETZ, JUDGE

Dear Counsel:

Today, the Supreme Court of Texas overruled relator's motion for leave to file petition for writ of mandamus in the above styled case. Motion for temporary relief is also overruled. Justice Gammage not sitting.

Sincerely,
John T. Adams, Clerk
by /s/ Blanca E. Morin
Blanca Morin, Deputy

cc: The Hon. John K. Dietz

APPENDIX B

UNITED STATES CONSTITUTION
FOURTH AMENDMENT

The right of the people to be secure in their persons, houses, paper and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

THE TURKS AND CAICOS ISLANDS CONFIDENTIAL RELATIONSHIPS ORDINANCE 1979

Section 2. In this Ordinance, unless the context otherwise requires—

"bank" means any bank or other financial institution to which the provisions of the Banking Ordinance 1979 apply;

"business of a professional nature" includes the relationship between a professional person and his principal, by whatever term the latter may be described, and also the relationship between a bank and a customer of that bank;

"confidential information" includes information concerning any property, or relating to any business of a professional nature or commercial transaction which has taken place, or which any party concerned contemplates may take place, which the recipient thereof is not, otherwise than in the normal course of business or professional practice, authorized by the principal to divulge;

"entitled to possession of confidential information" means so entitled, in the normal course of business or professional practice or by the specific consent of the party who, but for the giving of such consent, would be entitled to require the preservation of the confidentiality of that information;

"Minister" means the person charged for the time being with responsibility for finance;

"normal course of business or professional practice" means the ordinary and necessary routine involved in the efficient carrying out of the instructions of a principal including compliance

with such laws and legal processes as arises out of or in connection therewith and the routine exchange of information between professional persons;

"principal" means a person who has imparted to another person confidential information in the course of his business or professional relationship with that other person, and includes a customer of a bank in relation to his business transactions with that bank;

"professional person" includes an accountant, an attorney (or other legal practitioner by whatever name called), a broker or other kind of commercial agent or adviser, a bank or other financial institution, any public officer or other government official or employee, and such other persons as may be prescribed as being professional persons for the purposes of this Ordinance, and whether or not any such person was licensed or authorized, under any law for the time being in force, to act in that capacity; and also includes any person subordinate to or in the employment or under the control of any such person for the purpose of his professional activities;

"property" includes every present, contingent or future interest or claim, direct or indirect, legal or equitable, positive or negative, in any money or money's worth, real personal moveable or immoveable, rights, charges, and securities thereover and all documents and things evidencing or relating thereto.

Section 3. (1) Subject to the provision of subsection (2), this Ordinance shall apply to all confidential information with respect to business of a professional nature which arises in or is brought into the Islands and to all persons who come into possession of such information

at any time thereafter, whether within or without the Islands.

(2) This Ordinance shall not apply to confidential information given to or received by—

(a) any professional person acting in the normal course of business or professional practice or with consent, express or implied, of the relevant principal;

(b) any person in the course of the taking or giving of evidence, whether within or without the Islands, for the purpose of or in the course of the trial of any person in respect of an alleged criminal offense triable within the Islands or which would have been so triable if it had been committed within the Islands.

(c) a police officer in the execution of his duties whether within or without the Islands, investigating any criminal offence alleged to have been committed within the Islands or which, if it had been committed within the Islands, would have been a criminal offense under the law of the Islands;

(d) the Minister or a person exercising powers of examination or investigation under any of the provision of the Banking Ordinance 1979 or any law repealing or replacing that Ordinance.

Section 4. (1) Subject to the provisions of subsection (2) of section 3, any person who—

(a) being in possession of confidential information, however obtained—

(i) divulges it to any person not entitled to possession thereof; or

(ii) attempts, offers or threatens to divulge it to any person not entitled to possession thereof; or

(b) obtains or attempts to obtain confidential information to which he is not entitled,

shall be guilty of an offence:

Provided that it shall be a defence for a person charged with an offence under this subsection if he proves to the satisfaction of the court that, at the time when he divulged, attempted, offered or threatened to divulge or obtained or attempted to obtain (as the case may be), the confidential information in question, he may be), the confidential information in question, he did not know and did not have reasonable grounds to suspect that so doing would be a breach of an express or implied duty to preserve confidentiality or would be contrary to the provisions of this Ordinance.

(3) Any person who commits an offence under this section shall be liable on summary conviction—

(a) in the case of an individual to a fine of five thousand dollars or to imprisonment for two years or to both such fine and imprisonment; or

(b) in the case of a body corporate to a fine of twenty-five thousand dollars:

Provided that where an offence under this section is committed by a professional person, that person shall be liable on conviction—

(i) in the case of an individual to a fine of ten thousand dollars or to imprisonment for three years or to both such fine and imprisonment; or

(ii) in the case of a body corporate to a fine of fifty thousand dollars.

(4) Any person who is convicted of an offence under subsection (1) and is proved to have solicited, received or offered (as the case may be), on behalf of himself or any other person, any reward for doing the act which constituted the offence, shall be liable, in addition to any penalty imposed under subsection (3), to a further fine equivalent to the amount or value of the reward solicited, received or offered and to forfeit the amount or value of any reward actually received by him.

(5) Where an offence under this section is committed by a body corporate and is proved to the satisfaction of the court to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or similar officer (by whatever name called) of that body corporate, or by any person purporting to act in any such capacity, he as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished accordingly.

(6) For the avoidance of doubt, it is hereby declared that, subject to subsection (2) of the section 3, a bank which gives a credit reference in respect of a customer, without first obtaining the authority of that customer, shall be guilty of an offence under subsection (1).

5. Nothing in this Ordinance shall be deemed to affect or derogate from any rule of law or the rights of any person with regard to the civil liability of any person for any breach of any express or implied condition of confidentiality with regard to any business or professional relations or transactions between them.

6. The Governor may make regulations for carrying into effect the provision of this Ordinance and for prescribing anything which is required to be prescribed under any such provisions.

7. No prosecution shall be instituted under this Ordinance except by or with the written consent of the Attorney General.

TURKS AND CAICOS ISLANDS, THE COMPANIES ORDINANCE, 1981

PART VIII

CONFIDENTIAL RELATIONSHIPS IN RELATION TO EXEMPTED COMPANIES

Section 199. In this Part, unless the context otherwise requires-

"bank" and "financial institution" have the meanings ascribed to them in the Banking Ordinance, 1979;

"business of a professional nature" includes the relationship between a professional person and a principal, however the latter may be described;

"confidential information" includes information concerning any property which the recipient thereof is not, otherwise than in the normal course of business, authorized by the principal to divulge;

"criminal" in relation to an offence means an offence contrary to the criminal law of the Islands;

"Governor" means the Governor in Council;

"normal course of business" means the ordinary and necessary routine involved in the efficient carrying out of the instructions of a principal including compliance with such laws and legal process as arises out of and in connection therewith and the routine exchange of information between licensees;

"principal" means a person who has imparted to another confidential information in the course of the transaction of business of a professional nature;

"professional person" includes a public or government official, a bank, a trust company, an attorney, an accountant, an estate agent, an insurer, a broker and every kind of commercial agent and advisor whether or not answering to the above descriptions and whether or not licensed or authorized to act in that capacity and every person subordinate to or in the employ or control of such person for the purpose of his professional activities;

"property" includes every present, contingent and future interest or claim, direct or indirect, legal or equitable, positive or negative, in any money, moneys worth, realty or personalty, movable or immovable, rights and securities thereover and all documents and things evidencing or relating thereto.

Section 200. (1) Subject to subsection (2), this Part has application to all confidential information with resect to business of a professional nature of an exempted company which arises in or is brought into the Islands and to all persons coming into possession of such information at any time thereafter whether they be within the jurisdiction or thereout.

(2) This Part of this Ordinance has no application to the seeking, divulging or obtaining of confidential information—

(a) in compliance with the directions of the Supreme Court pursuant to section 201;

(b) by or to—

(i) any professional person acting in the normal course of business or with the consent, express or implied, of the relevant principal;

(ii) a police officer of the rank of Inspector or above investigating an offence committed or alleged to have been committed within the jurisdiction;

(iii) a police officer of the rank of Inspector or above, specifically authorized by the Governor in that behalf, investigating an offence committed or alleged to have been committed outside the Islands, which offence, if it had been committed in the Islands, would have been an offence against its laws;

(iv) the Financial Secretary or, in relation to particular information specified by the Governor, such other person as the Governor may authorize;

(v) a bank or financial institution in any proceedings, cause or matter when and to the extent to which it is reasonably necessary for the protection of the bank's interest, either as against its customers or as against third parties in respect of transactions of the bank or financial institution for or with its customers;

(vi) the relevant professional person with the approval of the Financial Secretary when necessary for the protection of himself or any other person against crime;

(c) in accordance with the provisions of this or any other Ordinance.

Section 201. (1) Whenever a person intends or is required to give in evidence in, or in connection with, any proceeding being tried, inquired into or determined by any Court, tribunal or other authority (whether within or without the Islands) of any confidential information within the meaning of this Part of this Ordinance, he shall before so doing apply for directions and any adjournment necessary for that purpose may be granted.

(2) Application for directions under subsection (1) shall be made to, and be heard and determined by a Judge of the Supreme Court sitting alone and *in camera*. At least seven days' notice of any such application shall be given to the Attorney General and, if the Judge so orders, to any person in the Islands who is a party to the proceedings in question. The Attorney General may appear as *amicus curiae* at the hearing of any such application and any party on whom notice has been served as aforesaid shall be entitled to be heard thereon, either personally or by counsel.

(3) Upon hearing an application under subsection (2) a Judge shall direct—

(a) that the evidence be given; or

(b) that the evidence shall not be given; or

(c) that the evidence be given subject to conditions which he may specify whereby the confidentiality of the information is safeguarded.

(4) In order to safeguard the confidentiality of a statement, answer or testimony ordered to be given under subsection (3)(c) a Judge may order—

(a) divulgence of the statement, answer or testimony to be restricted to certain named persons;

(b) evidence to be taken *in camera*;

(c) reference to the names, addresses and descriptions of any particular persons to be by alphabetical letters, numbers or symbols representing such persons, the key to which shall be restricted to persons named by him.

(5) Every person receiving confidential information by operation of subsection (2) is as fully bound by the provisions of this Part of this Ordinance as if such information had been entrusted to him in confidence by a principal.

(6) In consideration what order to make under this section a Judge shall have regard to—

(a) whether such order would operate as a denial of the rights of any person in the enforcement of a just claim;

(b) any offer of compensation or indemnity made to any person desiring to enforce a claim by any person having an interest in the preservation of secrecy under this Part of this Ordinance; and

(c) in any criminal case, the requirements of the interest of justice.

(7) In this section, unless the context otherwise requires—

"court" bears the meaning ascribed to it in section 2 of the Evidence Ordinance;

"given in evidence" and its cognates

means make a statement, answer an interrogatory or testify during or for the *purposes of any proceedings;*

"proceeding" means any court proceeding, civil or criminal and includes a preliminary or interrogatory matter leading to or arising out of a proceeding.

Section 202. (1) Subject to the provisions of section 200 (2), whoever—

(a) being in possession of confidential information however obtained;

(i) divulges it; or

(ii) attempts, offers or threatens to divulge it; or

(b) wilfully obtains or attempts to obtain confidential information, shall be guilty of an offence and ~~liable~~ on summary conviction to a fine of five thousand dollars and to imprisonment for two years.

(2) Whoever commits an offence under subsection (1) and receives or solicits on behalf of himself or another any reward for so doing shall be liable to double the penalty therein prescribed and to a further fine equal to the reward received and also to forfeiture of the reward.

(3) whoever, being in possession of confidential information clandestinely, or without the consent of the principal, makes use thereof for the benefit of himself or another shall be guilty of an offence and on summary conviction liable to the penalty prescribed in subsection (2) and for the purpose any profit accruing to any relevant transaction shall be regarded as a reward.

(4) Whoever being a professional person, entrusted as such with confidential information, the subject of the offence, commits an offence under subsection (1), (2) or (3) shall be liable to double the penalty therein *prescribed*.

(5) For the removal of doubt it is declared that, subject to subsection (2) of section 200, a bank which gives a credit reference in respect of a customer without first receiving the authorization of that customer shall be guilty of an offence under subsections (1) and (4).

RESTATEMENT (THIRD) FOREIGN RELATIONS LAW

Section 442. Requests for Disclosure: Law of the United States

(1) (a) A court or agency in the United States, when authorized by statute or rule of the court, may order a person subject to its jurisdiction to produce documents, objects, or other information relevant to an action or investigation, even if the information or the person in possession of the information is outside the United States.

(b) Failure to comply with an order to produce information may subject the person to whom the order is directed to sanctions, including finding of contempt, dismissal of a claim or defense, or default judgment, or may lead to a determination that the facts to which the order was addressed are as asserted by the opposing party.

(c) In deciding whether to issue an order directing production of information located aborad, and in framing such an order, a court or agency in the United States should take into account the importance to the investigation or litigation of the documents or other information requested; the degree of specificity of the requires; whether the information originated in the United States; the availability of alternative means of securing the information; and the extent to which noncompliance with the request would undermine important interests of the United States, or compliance with the request would undermine important interests of the state where the information is located.

(2) If disclosure of information located outside the United States is prohibited by a law, regulation, or order of a court or other authority of the state in which the information or

prospective witness is located, or of the state of which a prospective witness is a national,

(a) a court or agency in the United States may require the person to whom the order is directed to make a good faith effort to secure permission from the foreign authorities to make the information available;

(b) a court or agency should not ordinarily impose sanctions of contempt, dismissal, or default on a party that has failed to comply with the order for production, except in cases of deliberate concealment or removal of information or of failure to make a good faith effort in accordance with paragraph (a);

c) a court or agency may, in appropriate cases, make findings of fact adverse to a party that has failed to comply with the order for production, even if that party has made a good faith effort to secure permission from the foreign authorities to make the information available and that effort has been unsuccessful.

Comment:

a. Discovery as exercise of jurisdiction. Discovery for use in a judicial or administrative proceeding is an exercise of jurisdiction by a state, whether it emanates from an order of a court or from a demand by a party pursuant to a statute or rule of practice. In order to ensure that such exercise of jurisdiction is carried out consistently with the principal reasonableness (§§ 403, 421), Subsection (1) contemplates that, in civil litigation in the United States affecting foreign interests, courts control discovery practice from the outset of the litigation pursuant to Rule 16 of the Federal Rules of Civil Procedure and comparable State rules. Thus, except as specifically authorized by statute or rule of court, Reporters' Note 3, requests to produce documents or information located abroad should, as a matter of good practice, be issued as an order by the court, not merely in the form of a demand by a private party. General authorizations to litigants, as under Rule 34 of the Federal Rules of Civil Procedure, should not be construed to support departure from this practice.

Before issuing an order for production of documents, objects, or information located abroad, the court—or, where authorized, the agency—should scrutinize a discovery request more closely than it would scrutinize comparable requests for information located in the United States. Under Rule 26(b)(1) of the Federal Rules of Civil Procedure, discovery (including requests for documents) may extend to any matter not privileged which is relevant to the subject matter of the action, even if the information sought would be inadmissible at trial, if it appears reasonably calculated to lead to the discovery of admissible evidence. However, the second paragraph of the Rule, added in 1983, calls for imposition by the court of limits on the extent of discovery comparable to those set out in Subsection (1)(c). Given the difficulty in obtaining compliance, and the resistance of foreign states to discovery demands originating in the United States, it is ordinarily reasonable to limit foreign discovery to information necessary to the action—typically, evidence not otherwise readily obtainable—and directly relevant and material. Requests for information that could lead to admissible evidence would ordinarily not be granted under this standard, but a court might in some instances order disclosure of the identity and location of persons who may have knowledge of such information. Nothing in this section prevents parties from making disclosure of information without court intervention.

Typically, discovery requests and orders are addressed to parties before the court or agency, *i.e.*, to persons as to whom jurisdiction to adjudicate is not challenged or has been determined to exist. Discovery requests and orders may be addressed to non-parties within the United States as well. See Fed.R.Civ.P. 45 and corresponding State rules. for subpoenas issued to persons outside the United States, see Comment b and § 474, Reporters' Note 11. Discovery may be ordered also in aid of determining jurisdiction to adjudicate. See Reporters' Note 11.

This section deals with efforts to secure information under direct order of a United States court or comparable authority. For means to secure evidence located abroad through international judicial assistance, see §§ 473-74.

Art. 1.14—1. Unauthorized Insurance

Insurance business defined

Sec. 2. (a) Any of the following acts in this state effected by mail or otherwise is defined to be doing an insurance business in this state. The venue of an act committed by mail is at the point where the matter transmitted by mail is delivered and takes effect. Unless otherwise indicated, the term insurer as used in this Article includes all corporations, associations, partnerships and individuals engaged as principals in the business of insurance and also includes interinsurance exchanges, mutual benefit societies, and insurance exchanges and syndicates as defined by rules promulgated by the State Board of Insurance.

1. The making of or proposing to make as an insurer, an insurance contract.

2. The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety.

3. The taking or receiving of any application for insurance.

4. The receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration for any insurance or any part thereof.

5. The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state.

6. Directly or indirectly acting as an agent for other otherwise representing or aiding on behalf of another any person or insurer in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, a fixing of rates or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state. The provisions of this subdivision shall not operate to prohibit full-time salaried employees of

a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of such employer.

7. Contracting to provide indemnification or expense reimbursement in this state to persons domiciled in this state or for risks located in this state, whether as an insurer, agent, administrator, trust, funding mechanism, or by any other method, for any type of medical expenses including, but not limited to surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether this coverage is by direct payment, reimbursement, or otherwise. This provision shall not apply to:

(i) any program otherwise authorized by law that is established by any political subdivision of this state or under the provisions of The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes) or by a state agency; or

(ii) a multiple employer welfare arrangement which is fully insured as defined in 29 U.S.C.A. Section 1144(b)(6) except that the Commissioner may apply any laws that regulate the business of insurance in this state to the extent that such laws provide (1) standards requiring the maintenance of specified levels of contributions, which any such plan, or any trust established under such a plan, must meet in order to be considered under such law able to pay benefits in full when due, and (2) provisions to enforce such standards.

8. The doing of any kind of insurance business specifically recognized as constituting the doing of an insurance business within the meaning of the statutes relating to insurance.

9. The doing or proposing to do any insurance business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of the statutes.

10. Any other transactions of business in this state by an insurer.

11. With respect to policies authorized under Article 3.74 of this code, the use, creation, publication, mailing, or dissemination of an advertisement relating to any of the acts defined in this subsection to be doing an insurance business unless:

(i) that advertisement is used, created, published, mailed, or disseminated on behalf

of a person or insurer authorized under this title to engage in the business of insurance in this state, who has actual knowledge of the content of the advertisement and has authorized the advertisement to be used, created, published, mailed, or disseminated on that person's or insurer's behalf; and

(b) The provisions of this section do not apply to: ...

4. Transactions involving contracts of insurance independently procured through negotiations occurring entirely outside of this state which are reported and on which premium tax is paid in accordance with this Article.

Unauthorized insurance prohibited

Sec. 3. ...

(d) A person or entity who violates any provision of this Article is subject to a civil penalty of not more than $10,000 for each act of violation and for each day of violation to be recovered as provided in this section.

Unauthorized insurance premium tax

Sec. 11. (a) Except as to premiums on lawfully procured surplus lines insurance and premiums on independently procured insurance on which a tax has been paid pursuant to this Article or Article 1.14—2, every unauthorized insurer shall pay to the State Board of Insurance before March 1 next succeeding the calendar year in which the insurance was so effectuated, continued or renewed a premium receipts tax of 4.85 percent of gross premiums charged for such insurance on subjects resident, located or to be performed in this state. Such insurance on subjects resident, located or to be performed in this state procured through negotiations or an application, in whole or in part occurring or made within or form within or outside of this state, or for which premiums in whole or in part are remitted directly or indirectly from within or outside of this state, shall be deemed to be insurance procured, or continued or renewed in this state. The term "premium" includes all premiums, membership fees, assessments, dues and any other consideration for insurance. Such tax shall be in lieu of all other insurance taxes. On default of any such unauthorized insurer in the payment of such tax the insured shall pay the tax. If the tax prescribed

by this subsection is not paid within the time stated, the tax shall be increased by a penalty of 25 percent and by the amount of an additional penalty computed at the rate of one percent per month or any part thereof from the date such payment was due to the date paid.

(b) If a policy covers risks or exposures only partially in this state, the tax payable shall be computed on the portions of the premiums which are properly allocable to the risks or exposures located in this state. In determining the amount of premiums taxable in this state, all premiums written, procured, or received in this state and all premiums on policies negotiated in this state shall be deemed written on property or risks located or resident in this state, except such premiums as are properly allocated or apportioned and reported as taxable premiums of any other state or states.

Independently procured insurance

Sec. 12. (a) Every insured who procures or causes to be procured or continues or renews insurance with any unauthorized insurer, or any insured or self-insurer who so procures or continues excess loss, catastrophe or other insurance, upon a subject of insurance resident, located or to be performed within this state, other than insurance procured through a surplus lines agent pursuant to the surplus lines law of this state shall within 60 days after the date such insurance was so procured, continued or renewed, file a report of the same with the State Board of Insurance in writing and upon forms designated by the State Board of Insurance and furnished to such an insured upon request. The report shall show the name and address of the insured or insureds, name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently charged therefor, and such additional pertinent information as is reasonably requested by the State Board of Insurance.

(b) Any insurance in an unauthorized insurer of a subject of insurance resident, located or to be performed within this state procured through negotiations or an application, in whole or in part occurring or made within or from within or outside of this state, or for which premiums in whole or in part are remitted directly or indirectly from within or outside of this state, shall be deemed to be insurance procured, or continued or renewed in this state within the intent of Paragraph (a).

(c) There is hereby levied upon the obligation, chose in action, or right represented by the premium charged for such insurance,

a premium receipts tax of 3.85 percent of gross premiums charged for such insurance. The term "premium" shall include all premiums, membership fees, assessments, dues and any other consideration for insurance. Such tax shall be in lieu of all other insurance taxes. The insured shall, before March 1 next succeeding the calendar year in which the insurance was so procured, continued or renewed, pay the amount of the tax to the State Board of Insurance. In event of cancellation and rewriting of any such insurance contract the additional premium for premium receipts tax purposes shall be the premium in excess of the unearned premium of the canceled insurance contract.

(d) If a policy covers risks or exposures only partially in this state, the tax payable shall be computed on the portions of the premium which are properly allocable to the risks or exposures located in this state. In determining the amount of premiums taxable in this state, all premiums written, procured or received in this state and all premiums on policies negotiated in this state shall be deemed written on property or risks located or resident in this state, except such premiums as are properly allocated or apportioned and reported as taxable premiums of any other state or states.

(e) If the insured fails to withhold from the premium the amount of tax herein levied, the insured shall be liable for the amount thereof and shall pay the same to the State Board of Insurance within the time stated in Paragraph (c). If the tax prescribed by this subsection is not paid within the time stated in Paragraph (c), the tax shall be increased by a penalty of 25 percent and by the amount of an additional penalty computed at the rate of one percent per month or any part thereof from the date such payment was due to the date paid.

(f) The Attorney General, upon request of the State Board of Insurance, shall proceed in the courts of this or any other state or in any federal court or agency to recover such tax not paid within the time prescribed in this section.

(g) This section shall not be construed or deemed to abrogate or modify any provision of this Article. This section does not apply as to individual life or individual disability insurance.

Sec. 15. (c) In addition to the request for a temporary or permanent injunction in a proceeding brought under Subsection (a) of this section, the Attorney General, on a finding by the court that the defendant has engaged or is engaging in a practice declared to be unlawful by Article 17.46 of the Business & Commerce Code, as amended, this Article, or rules or regulations issued under this Article, may request a civil penalty of not more than $10,000 per violation.

APPENDIX C

NO. 471,568

THE STATE OF TEXAS and STATE BOARD OF INSURANCE,	§	IN THE DISTRICT COURT
Plaintiffs,	§	
vs.	§	OF TRAVIS COUNTY, TEXAS
RISK MANAGERS INTERNATIONAL, INC. HERSCHEL HANCOCK, Individually and as Officer of RISK MANAGERS INTERNATIONAL, INC.; NYLE LARGE, Individually and as Agent of RISK MANAGERS INTERNATIONAL, INC.; and CORPORATE UNDERWRITERS, LTD.,	§	
Defendants.	§	299TH JUDICIAL DISTRICT

ORDER OF MARCH 10, 1992
REGARDING THE DISCOVERY OF
FINANCIAL INFORMATION OF
DEFENDANT RISK MANAGERS INTERNATIONAL, INC.

On the 10th day of March, 1992, in the above-styled and numbered cause came before this Court The State of Texas and the State Board of Insurance ("plaintiffs") and Risk Managers International, Inc., Corporate Underwriters, Ltd. and Herschel Hancock, each

appearing by and through their counsel of record. Counsel for Nyle Large had notice of the hearing but did not appear. The Court, having heard and considered Risk Managers International, Inc.'s ("defendant") objections to the discovery of certain information concerning defendant's financial condition and having heard plaintiff's arguments in response, is of the opinion that defendant's objections should be denied.

It is hereby ORDERED, ADJUDGED and DECREED that:

1. At this time this Court is not ordering the production of federal income tax returns, 1099 forms, 940 forms, 941 forms and W-2s, and work papers used in computing those tax returns. Specifically:

1) Defendant Risk Managers International, Inc. is ORDERED to answer the following Interrogatories propounded by the plaintiffs:

INTERROGATORY NO. 11:

Identify any and all premiums, which were received by Risk Managers International, Inc. with respect to risks resident, located, or to be performed in Texas for insurance policies for was represented to be the insurer.

INTERROGATORY NO. 13:

Identify all non-employee accountants and/or bookkeepers retained by Risk Managers International, Inc. from January, 1985 through the present.

INTERROGATORY NO. 14:

For each accountant and/or bookkeeper identified in interrogatory no. 13, state the exact purpose for which they were retained, such as, but not limited to, preparation of income tax returns, audits, financial statements, etc.

INTERROGATORY NO. 15:

Identify all bank, and/or savings and loan accounts of any type held in the name of and/or for the benefit of Risk Managers International, Inc. from January 1, 1985 to the present, giving the name and address of each financial institution and the account number.

INTERROGATORY NO. 16:

State the net worth of Risk Managers International, Inc. for each year from 1985 to the present.

INTERROGATORY NO. 24:

Identify each and every person who has received commission(s) or any type of compensation from Risk Managers International, Inc. with respect to the business of insurance from January 1, 1985, to the present where the risks are resident, located, or to be performed in Texas and for which Corporate Underwriters, Ltd. was represented to be the insurer.

INTERROGATORY NO. 29:

List any and all premiums, received by Risk Managers International, Inc. which were sent to Corporate Underwriters, Ltd. with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. or Risk Managers International, Inc. was represented to be the insurer.

2) Defendant Risk Managers International, Inc. is ORDERED to produce for inspection to the Plaintiffs in Dallas, Texas the following documents for the time period January 1, 1985 to the present; to-wit:

PRODUCTION REQUEST NO. 1:

All documents relating to money paid or owed to any person or entity who solicited or aided in soliciting insurance coverage for you

with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

PRODUCTION REQUEST NO. 2:

All documents relating to the receipt of money by you for insurance coverage sold to any person or entity located in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

PRODUCTION REQUEST NO. 4:

All documents relating to claims paid for insurance coverage sold to any person or entity located in Texas for which Risk Managers International, Inc., or Corporate Underwriters, Ltd., was represented to be the insurer.

PRODUCTION REQUEST NO. 5:

All documents relating to expenses, commissions, fees, taxes and other costs related to insurance coverage sold to any person or entity located in Texas for which Risk Managers International, Inc., or Corporate Underwriters, Ltd., was represented to be the insurer.

PRODUCTION REQUEST NO. 6:

All correspondence from any person or entity relating to insurance coverage marketed to any person or entity located in Texas for which Risk Managers International, Inc., or Corporate Underwriters, Ltd., was represented to be the insurer. This request includes, but is not limited to, correspondence to or from insureds; correspondence to or from insurance agents; correspondence to or from prospective purchasers; and correspondence to or from any agent, employee, or officer of Risk Managers International, Inc., or Corporate Underwriters, Ltd.

PRODUCTION REQUEST NO. 8:

Any and all documents reflecting disbursements in cash, check, or wire transfer between Corporate Underwriters, Ltd. and Risk Managers International, Inc. regarding the solicitation and/or procurement of insurance to any risk resident, located, or to be performed in Texas.

PRODUCTION REQUEST NO. 9

All documentary material regarding the financial net worth of Risk Managers International, Inc. from 1985 to the present including

but not limited to financial statements, audits, compilations, and/or loan applications.

PRODUCTION REQUEST NO. 10:

All documentary material concerning or relating to the payment of salaries, expenses or other compensation for Risk Managers International, Inc., its agents, officers, directors and employees paid by Corporate Underwriters, Ltd.

PRODUCTION REQUEST NO. 11:

All documentary material reflecting the sale or purchase of assets for investment, for use as equipment, supplies, or other business purposes of Risk Managers International, Inc.

PRODUCTION REQUEST NO. 12:

All documentary material concerning or in any way relating to any income or receipts earned on the assets, investments or property of Corporate Underwriters, Ltd.

PRODUCTION REQUEST NO. 13:

All documentary material concerning or in any way relating to any payments either by check, in cash, wire transfer or property, either real or personal, made to Risk Managers International, Inc., in connection with any agreement pertaining to insurance involving Corporate Underwriters, Ltd., Inc.

PRODUCTION REQUEST NO. 19:

Any documentary material relating to claims paid by Risk Managers International, Inc. and/or Corporate Underwriters, Ltd., with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. or Risk Managers International, Inc. was represented to be the insurer.

PRODUCTION REQUEST NO. 20:

All documentary material relating to the renewal of insurance coverage issued with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd., or Risk Managers International, Inc. was represented to be the insurer. This request includes but is not limited to: correspondence, policies, endorsements, and premium checks.

PRODUCTION REQUEST NO. 21:

All documentary material relating to any new insurance coverage issued with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. or Risk Managers International, Inc. was represented to be the insurer. This request includes but is not limited to: correspondence, policies, endorsements, and premium checks.

PRODUCTION REQUEST NOS. 23 THROUGH 52:

To the extent that requests for document production numbers 23 through 52 request the production of financial information relating to the specific persons or entities identified.

PRODUCTION REQUEST NO. 53:

All documents which demonstrate any and all premium dollars obtained by or sent to Corporate Underwriters, Ltd. by anyone insured by Corporate Underwriters, Ltd. with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

PRODUCTION REQUEST NO. 54:

All documents which demonstrate any and all premium dollars obtained by or sent to Risk Managers International, Inc. by anyone insured by Corporate Underwriters, Ltd. with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

PRODUCTION REQUEST NO. 59:

All documents that are bank statements for accounts in the name of or for the benefit of Risk Managers International, Inc. or Corporate Underwriters, Ltd. pertaining to any funds or other compensation received from the sale of insurance with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. or Risk Managers International, Inc. was represented to be the insurer.

PRODUCTION REQUEST NO. 60:

All records of any bank account held in Texas in the name of or for the benefit of Risk Managers International, Inc. or Corporate Underwriters, Ltd. pertaining to any funds or other compensation received from the sale of insurance with respect to risks resident,

located, or to be performed in Texas for which Corporate Underwriters, Ltd. or Risk Managers International, Inc., was represented to be the insurer.

2. Defendant is further ordered to produce to the Court for in-camera inspection any and all insurance claims files and portions of insurance claims files that are in litigation or where litigation is anticipated for risk, resident, located or to be performed in Texas which the defendant asserts are privileged under Texas Rule of Civil Procedure 166b.

3. Defendant and plaintiffs are further ordered to produce to the Court for in-camera inspection the documents which have been requested by plaintiffs or defendants pursuant to their respective discovery requests on the other that either the defendant or the plaintiffs assert are privileged as witness statements, attorney-client communications, party communications, attorney work product, or trade secrets.

SIGNED, this the 15th day of May, 1992, NUNC PRO TUNC March 10, 1992.

/s/ John K. Dietz
JUDGE JOHN K. DIETZ

AGREED AS TO FORM:

/s/ Linda Ibach Shaunessy
LINDA IBACH SHAUNESSY
Attorney for Plaintiffs

/s/ Terry Scarborough
TERRY SCARBOROUGH
Attorney for Risk Managers International, Inc.

C-2-1

NO. 471,568

THE STATE OF TEXAS and STATE BOARD OF INSURANCE,	§	IN THE DISTRICT COURT
Plaintiffs,	§	
vs.	§	OF TRAVIS COUNTY, TEXAS
RISK MANAGERS INTERNATIONAL, INC. HERSCHEL HANCOCK, Individually and as Officer of RISK MANAGERS INTERNATIONAL, INC.; NYLE LARGE, Individually and as Agent of RISK MANAGERS INTERNATIONAL, INC.; and CORPORATE UNDERWRITERS, LTD.,	§	
Defendants.	§	299TH JUDICIAL DISTRICT

ORDER OF MARCH 10, 1992 REGARDING THE DISCOVERY OF FINANCIAL INFORMATION OF DEFENDANT HERSCHEL HANCOCK

On the 10th day of March, 1992, in the above-styled and numbered cause came before this Court The State of Texas and the State Board of Insurance ("Plaintiffs") and Risk Managers International, Inc., Corporate Underwriters, Ltd. and Herschel Hancock, each

appearing by and through their counsel of record. Counsel for Nyle Large had notice of the hearing but did not appear. The Court, having heard and considered Herschel Hancock's ("Defendant") objection to the discovery of certain information concerning Defendant's Objections should be denied.

It is hereby ORDERED, ADJUDGED and DECREED that:

1. At this time this Court is not ordering the production of federal income tax returns, 1099 forms, 940 forms, 941 forms and W-2s and work papers used in computing those tax returns. Subject to Herschel Hancock's objection to discovery based on his assertion of Fifth Amendment privilege as made applicable to the States by the Fourteenth Amendment and Sections 9 and 10 of Article I of the Texas Constitution, hereinafter "Fifth Amendment", which objection will be determined by this Court at a later date, the Court hereby orders the following:

1) Defendant, Herschel Hancock, is ORDERED to answer the following Interrogatories propounded by the Plaintiffs; to-wit:

INTERROGATORY NO. 5:
Please state the social security number Herschel Hancock.

INTERROGATORY NO. 6:
Identify each person from whom you or your attorney, agent, or representative have obtained any written or recorded statement or report regarding the facts relating to this lawsuit,

and identify the persons having custody or control of such statements and reports. This request includes, but is not limited to:

a) any written statement signed or otherwise adopted or approved by the person making it; and

b) any stenographic, mechanical, electrical, or other type of recording, or any transcription thereof which is a substantially verbatim recital of a statement made by the person and contemporaneously recorded.

INTERROGATORY NO. 7:
State the complete address (street address, city, county and state) of each place where you have lived since January 1, 1985 to the present.

INTERROGATORY NO. 11:
Identify any and all premiums and other consideration which were received by Risk Managers International, Inc. with respect to risk resident, located, or to be performed in Texas for which Corporation Underwriters, Ltd. was represented to be the insurer.

INTERROGATORY NO. 13:
Identify all accountants and/or bookkeepers retained by Herschel Hancock from January 1985, through the present.

INTERROGATORY NO. 14:
For each accountant and/or bookkeeper identified in Interrogatory No. 13, state the exact purpose for which they were retained, such as, but not limited to, preparation of federal income tax returns, audits, financial statements, etc.

INTERROGATORY NO. 15:
State the net worth of Herschel Hancock for each year from 1985 to the present.

INTERROGATORY NO. 16:
State the net worth of Risk Managers International, Inc. for each year from 1985 to the present.

INTERROGATORY NO. 17:
State the total amount of money which was received by Herschel Hancock as salary, commissions, dividends, stock options, stocks, bonds, automobiles, house(s), mortgage payments, credit card payments, real estate, and/or bonuses from Risk Managers International, Inc. and/or Corporate Underwriters, Ltd.

INTERROGATORY NO. 18
Identify all commissions received or due to be received by you from the sale of insurance policies for Corporate Underwriters, Ltd. with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

INTERROGATORY NO. 18a:
For each commission(s) identified in Interrogatory No. 18, identify the client/insured for whom the commission is to be or was paid the dollar amount of the commission, and whether the commission was actually paid.

INTERROGATORY NO. 23
Identify each and every person and/or entity in the State of Texas who has received insurance commission(s) or any type of compensation from Risk Managers International, Inc. from January 1, 1985, for the sale of insurance with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. or Risk Managers International, Inc. was represented to be the insurer.

INTERROGATORY NO. 25:
Identify what documents were used to calculate your answer to Interrogatory No. 15.

INTERROGATORY NO. 26:
Identify what documents you used to calculate your answer to Interrogatory No. 16.

Subject to Herschel Hancock's objection to discovery based on his assertion of Fifth Amendment privilege, which objection will be

determined by this Court at a later date Defendant, Herschel Hancock, is ORDERED to produce for inspection to the Plaintiffs in Dallas, Texas the following documents for the time period January 1, 1985 to the present; to-wit:

PRODUCTION REQUEST NO. 1:
All documents relating to money paid or owed to any person or entity who solicited or aided in soliciting insurance coverage for or with you with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters was represented to be the insurer.

PRODUCTION REQUEST NO. 2:
All documents relating to the receipt of money by you for insurance coverage sold by Risk Managers International, Inc. To any person or entity located in Texas for which Corporate Underwriters, Ltd. Was represented to be the insurer.

PRODUCTION REQUEST NO. 4:
All documents relating to claims paid for insurance coverage sold to any person or entity located in Texas for which Risk Managers International, Inc., or Corporate Underwriters, Ltd., was represented to be the insurer.

PRODUCTION REQUEST NO. 5:
All documents relating to expenses, commissions, fees, taxes and other costs related to insurance coverage sold to any person or entity located in Texas for which Risk Managers International, Inc., or Corporate Underwriters, Ltd., was represented to be the insurer.

PRODUCTION REQUEST NO. 6:
All correspondence to or from any person or entity relating to insurance coverage marketed to any person or entity located in Texas for which Risk Managers International, Inc., or Corporate Underwriters, Ltd., was represented to be the insurer. This request includes, but is not limited to, correspondence to or from insureds; correspondence to or from

insurance agents' correspondence to or from any agent employee, or officer of Risk Managers International, Inc. or Corporate Underwriters, Ltd.

PRODUCTION REQUEST NO. 8:
Any and all documents reflecting disbursements in cash, check, or wire transfer between Herschel Hancock and Corporate Underwriters, Ltd. and/or Risk Managers International, Inc. regarding the solicitation and/or procurement of insurance to any risk resident, located, or to be performed in Texas.

PRODUCTION REQUEST NO. 9
Any and all documentary material concerning or reflecting any deposit either in interest or non-interest bearing accounts of any financial institution, including any bank, or savings and loan, made by Risk Managers International, Inc. from 1985 to the present.

PRODUCTION REQUEST NO. 10:
All documentary material concerning or relating to the payment of salaries, expenses or other compensation for Risk Managers International, Inc., its agents, officers, directors and employees paid by Corporate Underwriters, Ltd.

PRODUCTION REQUEST NO. 13:
All documentary material concerning or in any way relating to any payments either by check, in cash, wire transfer, or property, either real or personal, made to Risk Managers International, Inc., in connection with any agreement pertaining to insurance involving Corporate Underwriters, Inc.

PRODUCTION REQUEST NO. 19:
any documentary material relating to claims paid by Risk Managers International, Inc., and/or Corporate Underwriters, Ltd., to Texas residents and/or entities entitled to do business in Texas or on behalf of an insured residing or located in Texas with respect to insurance policies where Corporate Underwriters, Ltd. or Risk Managers International, Inc. was represented to be the insurer.

PRODUCTION REQUEST NO. 20:
All documentary material relating to the renewal of insurance coverage issued to Texas residents and/or entities entitled to do business in Texas by or through Risk Managers International, Inc. and/or Corporate Underwriters, Ltd. with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer. This request includes but is not limited to: correspondence, policies, endorsements,a nd premium checks.

PRODUCTION REQUEST NO. 21:
All documentary material relating to any new insurance coverage issued to Texas residents and/or entities entitled to do business in Texas by or through Risk Managers International, Inc. and/or Corporate Underwriters, Ltd. with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer. This request includes but is not limited to: correspondence, policies, endorsements, and premium checks.

PRODUCTION REQUEST NO. 23 THROUGH 52:
To the extent that requests for document production numbers 23 through 52 request the production of financial information relating to the specific persons or entities identified.

PRODUCTION REQUEST NO. 54:
All documents which demonstrate any and all premium dollars obtained by or sent to Risk Managers International, Inc. by anyone insured by Corporate Underwriters, Ltd. with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

PRODUCTION REQUEST NO. 60:
All reports, audits, balance sheets, annual statements, and/or any documents of any type relating to the financial net worth of Risk Managers International, Inc. and/or Herschel Hancock from January 1, 1985 to the present.

PRODUCTION REQUEST NO. 61:
All documents relating to Risk Managers International, Inc.'s funds, including capital reserve, or assets available for payment of insurance claims which are pending, or may occur in the future for the years 1985 through the present date with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. or Risk Managers International, Inc. was represented to be the insurer.

PRODUCTION REQUEST NO. 62:
All documents relating to money paid or accounted for as "consultant fees" by Risk Managers International, Inc. for the years 1985 through the present date with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. was represented to be the insurer.

PRODUCTION REQUEST NO. 63
All documents relating to dividends paid or declared by Risk Managers International, Inc. or other payments made to stockholders by Risk Managers International, Inc. for the years 1985 through the present date.

PRODUCTION REQUEST NO. 64:
All documents relating to any compensation, benefit, or thing of value given or loaned to Herschel Hancock, Candace Hancock, or Michael Hancock by Risk Managers International, Inc. and/or Corporate Underwriters, Ltd. for the years 1985 through the present date.

PRODUCTION REQUEST NO. 65
All documents relating to financial statements and the financial net worth of Risk Managers International, Inc. for the years 1985 through the present date.

PRODUCTION REQUEST NO. 67:
All work papers and documents used in support of audits, compilations, reviews, management letters, or consultations relating to Risk Managers International, Inc. for the period 1985 through the present date.

PRODUCTION REQUEST NO. 69:

All documents relating to money paid or owed to any person or entity who solicited or aided in soliciting insurance coverage on behalf of Corporate Underwriters, Ltd., and/or Risk Managers International, Inc. with respect to risks resident, located, or to be performed in Texas for which Corporate Underwriters, Ltd. or Risk Managers International, Inc. was represented to be the insurer.

PRODUCTION REQUEST NO. 76:
All documentary material concerning or in any way relating to any compensation for Risk Managers International, Inc. made to Herschel Hancock.

PRODUCTION REQUEST NO. 86:
All documentary material concerning or in any way relating to any payments either by check, cash, wire transfer, and/or property, either real or personal, made to Corporate Underwriters, Ltd., in connection with any insurance agreement involving Risk Managers International, Inc.

2. Defendant is further ordered to produce to the Court for in-camera inspection any and all insurance claims files and portions of insurance claims files that are in litigation or where litigation is anticipated for risks, resident, located or to be performed in Texas which the Defendant asserts are privileged under Texas Rule of Civil Procedure 166b. The production is subject to Herschel Hancock's objection to discovery based on his assertion of Fifth Amendment privilege, which objection will be determined by this Court at a later date.

3. Defendant and Plaintiffs are further ordered to produce to the Court for in-camera inspection the documents which have been

requested by Plaintiffs or Defendants pursuant to their respective discovery requests on the other that either the Defendant or the Plaintiffs assert are privileged as witness statements, attorney-client communications, party communications, attorney work product, or trade secrets.

SIGNED this the 15th day of May, , 1992, NUNC PRO TUNC March 10, 1992.

/s/ John K. Dietz
JUDGE JOHN K. DIETZ
Presiding Judge

AGREED AS TO FORM:

/s/ Linda Ibach Shaunessy
LINDA IBACH SHAUNESSY
Attorney for Plaintiffs

/s/ Alicia Curran
ALICIA CURRAN
Attorney for Herschel Hancock

APPENDIX D

NO. 471,568

THE STATE OF TEXAS and STATE BOARD OF INSURANCE,	§	**IN THE DISTRICT COURT**
Plaintiffs,	§	
vs.	§	**OF TRAVIS COUNTY, TEXAS**
RISK MANAGERS INTERNATIONAL, INC. HERSCHEL HANCOCK, Individually and as Officer of RISK MANAGERS INTERNATIONAL, INC.; NYLE LARGE, Individually and as Agent of RISK MANAGERS INTERNATIONAL, INC.; and CORPORATE UNDERWRITERS, LTD.,	§	
Defendants.	§	**299TH JUDICIAL DISTRICT**

ORDER DENYING MOTION FOR RECONSIDERATION

RE: OBJECTIONS OF DEFENDANT CORPORATE UNDERWRITERS, LTD., TO PLAINTIFF STATE OF TEXAS' FIRST AMENDED INTERROGATORIES AND PRODUCTION REQUEST AND SECOND AMENDED SET OF REQUESTS FOR ADMISSIONS.

On the 14th day of April, 1992, came on to be considered Defendant Corporate Underwriters, Ltd.'s (hereinafter "Corporate")

Motion for Reconsideration of the decision announced from the bench by the Court that Corporate is to tender for in-camera inspection pursuant to Rule 166(b)(4) of the Texas Rules of Civil Procedure documents and responses in response to Plaintiff State of Texas' First Amended Interrogatories and Production Request and Second Amended set of Requests for Admissions.

Having considered the motion, supporting affidavits and the argument of counsel the Court is of the opinion that such Motion for Reconsideration should be denied.

IT IS THEREFORE ORDERED that Corporate's Motion for Reconsideration of the decision announced from the bench by the Court on March 10, 1992 that Corporate is to tender for in-camera inspection pursuant to Rule 166(b)(4) of the Texas Rules of Civil Procedure documents and responses in response to Plaintiff State of Texas' First Amended Interrogatories and Production Request and Second Amended Set of Requests for Admissions be, in all things, DENIED.

SIGNED AND ENTERED THIS 14th day of April, 1992, by:

/s/ John K. Dietz
JUDGE JOHN K. DIETZ
PRESIDING

APPENDIX E

STATE OF TEXAS' INTERROGATORIES AND REQUESTS FOR PRODUCTION

PRODUCTION REQUEST NO. 1:

All documents relating to money paid or owed to any person or entity who solicited or aided in soliciting insurance coverage for you.

PRODUCTION REQUEST NO. 2:

All documents relating to the receipt of money by you for insurance coverage sold to any person or entity located in Texas.

PRODUCTION REQUEST NO. 3:

All documents relating to claims made against insurance coverage sold to any person or entity located in Texas for which Risk Managers International, Inc., or Corporate Underwriters, Ltd., was represented to be the insurer.

PRODUCTION REQUEST No. 4:

All documents relating to claims paid for insurance coverage sold to any person or entity located in Texas for which Risk Managers International, Inc., or corporate Underwriters, Ltd., was the insurer.

PRODUCTION REQUEST NO. 5:

All documents relating to expenses commissions, fees, taxes and other costs related to insurance coverage sold to any person or entity located in Texas for which Risk Managers International, Inc., or Corporate Underwriters, Ltd., was represented to be the insurer.

PRODUCTION REQUEST NO. 7:

Any and all documents which are certificates of incorporation, by-laws, and minutes of board of directors meetings of Corporate Underwriters, Ltd.

PRODUCTION REQUEST NO. 8:

Any and all documents reflecting disbursements in cash, check, or wire transfer between Corporate Underwriters, Ltd., and Risk Managers International, Inc.

PRODUCTION REQUEST NO. 9:

All documentary material concerning or reflecting any deposits either in interest or non-interest bearing accounts of any financial institution, including any bank, or savings and loan, made by Risk Managers International, Inc. for or on behalf of Corporate Underwriters, Ltd.

PRODUCTION REQUEST NO. 10:

All documentary material concerning or relating to the payment of salaries, expenses or other compensation for Risk Managers International, Inc., its agents, officers, directors and employees paid by Corporate Underwriters, Ltd.

PRODUCTION REQUEST NO. 11:

All documentary material reflecting the sale or purchase of assets for investment, for use as equipment, supplies, or other business purposes of Corporate Underwriters, Ltd.

PRODUCTION REQUEST NO. 12:

All documentary material concerning or in any way relating to any income or receipts earned on the assets, investments or property of Corporate Underwriters, Ltd.

PRODUCTION REQUEST NO. 13:

All documentary material concerning or in any way relating to any payments either by check, in cash, wire transfer or property, either real or personal, made to Risk Managers International, Inc., in connection with any insurance agreement involving Corporate Underwriters, Inc.

PRODUCTION REQUEST NO. 14:

Any and all insurance treaties or contracts or any other agreement(s) between Risk Managers International, Inc., Herschel Hancock, Nyle Large, Hugh Thompson, and/or Corporate Underwriters, Ltd.

PRODUCTION REQUEST NO. 18:

Any documentary material relating to claims made by Texas residents and/or entities entitled to do business in Texas or pursuant to any policy or coverage issued to a Texas resident, against Risk Managers International, Inc. and/or Corporate Underwriters, Ltd.

PRODUCTION REQUEST NO. 19:

Any documentary material relating to claims paid by Risk Managers International, Inc. and/or Corporate Underwriters, Ltd., to Texas residents and/or entities entitled to do business in Texas or on behalf of an insured residing or located in Texas.

PRODUCTION REQUEST NO. 53:

All documents which demonstrate any and all premium dollars obtained by or sent to CU by anyone insured by CU.

PRODUCTION REQUEST NO. 54:

All documents which demonstrate any and all premium dollars obtained by or sent to RMI by anyone insured by CU.

PRODUCTION REQUEST NO. 55:

All documents which demonstrate any and all premium dollars obtained by or sent to CU by anyone insured by RMI.

PRODUCTION REQUEST NO. 56:

All documents which demonstrate any and all premium dollars obtained by or sent to RMI by anyone insured by RMI.

INTERROGATORIES

INTERROGATORY NO. 7:

Identify all insurance claims made by Texas insured for Corporate Underwriters, Ltd. insurance policies.

INTERROGATORY NO. 8:

Identity individually as to each claim identified in Interrogatory No. 7 as to whether it was paid, denied, or is still under review. If the claim was paid, identify the claimant, and state the claimant's bank account number and bank name under which the claim was paid. If the claim is still under review, identify the claimant and the reasons why the claim has not been paid. If the claim was denied, identify the claimant and state the reason why the claim was denied.

INTERROGATORY NO. 10:

Identify all agreements or contracts whether oral or written which Corporate Underwriters, Ltd. entered into with Risk Managers International, Inc., and state the substance and date of each such agreement.

INTERROGATORY NO. 11:

State the total amount of premiums, fees, and other consideration which was paid to Corporate Underwriters, Ltd. by Texas residents or Texas insureds for any Corporate Underwriters, Ltd. insurance policies.

INTERROGATORY NO. 16:

Identify all investments made by Corporate Underwriters, Ltd. from October 1984 through the present. The term investments shall not be limited to but shall include purchases of corporate stock, purchases or

mutual funds, acquisition of partnership or proprietorship interests, deposits in money market funds, purchases of real estate, bond purchases, and corporate loans.

INTERROGATORY NO. 17:

State the total amount of premiums, commissions, membership fees, assessments, dues, and other consideration received by Corporate Underwriters, Ltd. for any insurance coverage issued by Corporate Underwriters, Ltd. to residents of the State of Texas.

INTERROGATORY NO. 18:

List the total liability limits of each insurance policy, as well as the type of insurance policy issued to a Texas resident or Texas domiciliary by Corporate Underwriters, Ltd.

INTERROGATORY NO. 19:

Identify each person or entity you contend may be responsible for paying any part of workers compensation insurance claims for policies sold by or through Risk Managers International, Inc. and/or Corporate Underwriters, Ltd., in Texas.

INTERROGATORY NO. 20:

For any person or entity identified in answer to interrogatory No. 19, state the reason(s) you contend they may be responsible and all facts supporting your contention.

INTERROGATORY NO. 24:

Identify each and every person and/or entity in the State of Texas who has received commission or any type of compensation from Corporate Underwriters, Ltd. from January 1, 1985 to the present and the amount of compensation received by each.

INTERROGATORY NO. 25:

Describe any and all information known to you about Transworld Reinsurers Ltd. of the Turks
and Caicos Islands, British West Indies.

INTERROGATORY NO. 27:

Describe the exact nature of the business and/or legal relationship between Corporate Underwriters, Ltd. and Transworld Reinsurers, Ltd. of the Turks and Caicos Islands, British West Indies.

INTERROGATORY NO. 30:

List any and all premiums, commissions, fees, and/or any kind of renumeration (sic) which RMI sent to CU.

APPENDIX F

IN THE SUPREME COURT

THE TURKS AND CAICOS ISLANDS ACTION NO. M 17/91

IN THE MATTER OF:

THE STATE OF TEXAS AND THE STATE BOARD OF INSURANCE - PLAINTIFFS

V:

RISK MANAGERS INTERNATIONAL, INC:
HERSCHELL HANCOCK INDIVIDUALLY AND AS AGENT OF RISK MANAGERS-INTERNATIONAL, INC. AND
NYLE LARGE INDIVIDUALLY AND AS AN AGENT OF RISK MANAGERS INTERNATIONAL, INC. AND
CORPORATE UNDERWRITERS, LTD. - DEFENDANTS

AND IN THE MATTER OF SECTION 201 OF THE COMPANIES ORDINANCE 1981

AND IN THE MATTER OF THE CONFIDENTIAL RELATIONSHIPS ORDINANCE 1979

ORDER

HAVING HEARD COUNSEL for Corporate Underwriters on a Summons for Directions and having read the Affidavit of Reshid Bodhanya filed in support thereof it is ordered and directed that no confidential information within the meaning of the Companies

Ordinance 1981 and the Confidential Relationships Ordinance 1979 be divulged by Corporate Underwriters particularly in answer to: -

(a) State of Texas First Document Production Request to Corporate Underwriters Ltd. served on 3rd July 1991.

(b) State of Texas First Set of Interrogatories to Corporate Underwriters Ltd. served on 3rd July 1991.

(c) Plaintiffs' First Set of Request for Admissions to Corporate Underwriters Ltd. served on 17th July 1991.

Dated this 6th day of February 1992.

/s/ Lindsay Worrell
LINDSAY WORRELL GCM Q.C.

HON CHIEF JUSTICE